

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CR-80-BO-1

RANDOLPH LEE MCNEILL,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER


This matter is before the Court on petitioner's motion for *nunc pro tunc* explanation as to whether petitioner was sentenced pursuant to the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). By order filed July 21, 2016, the court of appeals denied petitioner's request for authorization to file a second or successive 28 U.S.C. § 2255 petition. [DE 109]. Specifically, the court of appeals found that "McNeill fails to make the prima facie showing necessary to receive the requested authorization" because his status as an armed career criminal "remains unaffected by *Johnson* and *Mathis*." *Id.* (citing *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Johnson v. United States*, 135 S. Ct. 2551 (2015)). Petitioner seeks a *nunc pro tunc* explanation of his sentence to determine whether he was actually sentenced as an ACCA offender.

As noted by the court of appeals, petitioner was sentenced pursuant to the ACCA. However, insofar as petitioner requests review of the propriety of such a sentence in light of *Johnson* and *Mathis*, this Court is without authority to do so in the absence of pre-filing authorization from the court of appeals. *See United States v. Winestock*, 340 F.3d 200, 205 (4th

Cir. 2003); *see also Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (federal courts may not issue advisory opinions).

Accordingly, petitioner's motion [DE 114] is DENIED.

SO ORDERED, this 25 day of April, 2017.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE